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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

INTEL CORPORATION and APPLE INC.,

Plaintiffs,

v.

FORTRESS INVESTMENT GROUP LLC,
FORTRESS CREDIT CO. LLC, UNILOC 2017
LLC, UNILOC USA, INC., UNILOC
LUXEMBOURG S.A.R.L., VLSI
TECHNOLOGY LLC, INVT SPE LLC,
INVENTERGY GLOBAL, INC., DSS
TECHNOLOGY MANAGEMENT, INC., IXI
IP, LLC, and SEVEN NETWORKS, LLC,

Defendants.

Case No. 3:19-cv-07651-EMC

**INITIAL JOINT CASE MANAGEMENT
STATEMENT**

Pursuant to Civil Local Rule 16-9 and this Court’s Standing Order, the parties jointly submit this Joint Case Management Statement and Proposed Order. Counsel for Intel Corporation (“Intel”) and Apple Inc. (“Apple”) (hereinafter collectively, “Plaintiffs”) and counsel for Fortress Investment Group LLC (“Fortress”), Fortress Credit Co. LLC (“Fortress Credit”), Uniloc 2017 LLC (“Uniloc 2017”), Uniloc USA, Inc. (“Uniloc USA”), Uniloc Luxembourg S.A.R.L. (“Uniloc Luxembourg”), VLSI Technology LLC (“VLSI”), INVT SPE LLC (“INVT”), Inventergy Global, Inc. (“Inventergy”), DSS Technology Management, Inc. (“DSS”), IXI IP, LLC (“IXI IP”), and Seven Networks, LLC (“Seven Networks”) (hereinafter collectively, “Defendants”) met and conferred on January 27, 2020.

1. Jurisdiction and Service

Plaintiffs contend that this Court has subject matter jurisdiction over Plaintiffs’ federal claims pursuant to under 28 U.S.C. §§ 1331 (federal question) and 1337(a) (antitrust). This Court has jurisdiction over the unfair competition claims arising under state law pursuant to 28 U.S.C. § 1367(a). No issues exist regarding venue. All named parties have been served, and there are no unresolved issues relating to service of process.

2. Facts and Legal Issues

a. Plaintiffs’ Statement

i. Facts

As set forth in their detailed Complaint, Intel and Apple are challenging the Defendants’ anticompetitive scheme of acquiring a massive portfolio of patents (including substitute and complementary patents) that purportedly read on electronic devices and components or software therein and processes used to manufacture them, and then using their aggregated portfolio to obtain patent royalties greatly exceeding the value of the alleged inventive contributions of and competitive prices for the patents, including through serial, baseless assertions, if necessary. For example, with the creation of VLSI, Fortress Investment Group has pursued a “Privateering Option” in which patents were transferred from an operating company to VLSI so that they could be asserted in litigation to attempt to obtain a windfall in royalties. As another example, Uniloc entities have sued Apple in 25 infringement actions, without regard to the merits of the assertions.

1 Intel and Apple now face damages demands in the billions of dollars from VLSI and Uniloc,
2 respectively, in multiple litigations.

3 Intel and Apple allege that by aggregating a massive portfolio of patents, the Defendants
4 have changed the dynamics for determining whether to assert a patent and the targets' available
5 options for addressing the assertions—with harmful impacts on competition. Intel and Apple
6 further allege that Defendants have targeted suppliers of high-tech consumer and enterprise
7 electronic devices and components and software for those devices because they provide attractive
8 targets for repeated and meritless patent assertions. The scope of Defendants' aggregation and
9 their focus on electronics patents enables them to exercise hold-up power by eliminating
10 substitutes and artificially inflating the value of patents with little or no inventive value. To
11 further their anticompetitive scheme, the Defendants have asserted waves of patent lawsuits
12 against their targets without regard for the merits of their claims. Rather than licensing and
13 litigating based on the patent merits, the Defendants exploit volume and repetition, targeting the
14 resolve of the targets. Given the number of patents that the Defendants own or control, the
15 Defendants can serially bring weak patent claims against their targets with the threat of ever more
16 patent assertions and ever more litigation. Faced with this threat, many victims have agreed to
17 settle, rather than to defend the assertions, for amounts that reflect not the alleged merits of the
18 underlying patents but the anticompetitive effectiveness of the Defendants' model. Thus, through
19 their aggregation, the Defendants foreclose litigation as an economic alternative to licensing
20 patents.

21 Through their conduct—as set out in more detail in the Complaint—the Defendants have
22 harmed competition in the “Electronics Patents Market” in the United States—an antitrust market
23 for patents for high-tech consumer and enterprise electronic devices and components or software
24 therein and processes used to manufacture them. Fortress has market power in the Electronics
25 Patents Market based on the number of patents that Fortress and its patent assertion entities
26 (“PAEs”) have aggregated and Fortress and its PAEs' methods of asserting those patents. In
27 particular, given the size of the portfolio, it is exceedingly difficult for any potential licensee to
28 meaningfully analyze the patents in the portfolio in a systematic fashion. Thus, the size of the

1 aggregated portfolio imposes substantial costs for suppliers of electronic devices to design or work
 2 around, no matter the merits of the constituent patents. Moreover, Fortress's PAEs assert their
 3 patents to read broadly on the accused products in ways that are facially invalid, but that Fortress's
 4 PAEs claim make it infeasible to design around. In addition, the features of products accused of
 5 infringement by Fortress's PAEs may be difficult or impossible to modify because of the
 6 extremely high switching costs involved given the investments that have already been made in
 7 product design and production. The supracompetitive licensing returns Fortress's PAEs have
 8 obtained are direct evidence of market power.

9 Intel and Apple challenge the Defendants' conduct as (1) unlawful agreements to restrain
 10 competition in patent licensing in violation of Section 1 of the Sherman Act; (2) unlawful asset
 11 acquisitions in violation of Section 7 of the Clayton Act; (3) unfair methods of competition in
 12 violation of Section 17200 of the Cal. Bus. & Prof. Code; and (4) (by Apple only) attempts to
 13 evade their commitments to license their claimed standard-essential patents ("SEPs") for cellular
 14 standards under fair, reasonable, and non-discriminatory ("FRAND") terms and conditions by
 15 transferring these claimed SEPs among these Defendants, and by scheming to have the acquiring
 16 parties demand non-FRAND royalties constitutes unfair methods of competition in violation of
 17 Section 17200 of the Cal. Bus. & Prof. Code.

18 The factual issues to be decided include, but are not limited to:

- 19 • Whether Defendants entered agreements that unreasonably restrained trade and
 20 affected interstate or foreign commerce;
- 21 • Whether Defendants engaged in patent acquisitions that may substantially lessen
 22 competition;
- 23 • Whether Defendants' conduct has harmed competition in the licensing of patents for
 24 high-tech consumer and enterprise electronic devices and components or software
 25 therein and processes used to manufacture them and has also caused harm
 26 downstream in sales of electronics devices and components and software for those
 27 devices;

- Whether Fortress, Uniloc, INVT, and Inventergy have evaded or attempted to evade commitments to license claimed SEPs for cellular standards under FRAND terms and conditions by demanding non-FRAND royalties for SEPs;
- Whether Fortress, Uniloc, INVT, and Inventergy have harmed competition in the markets for the functionality for cellular standards that are claimed to be covered by their SEPs;
- Whether Defendants' conduct has injured Apple and Intel, and if so, in what amount.

ii. Legal Issues

The legal issues to be decided include, but are not limited to:

- Whether Fortress, Uniloc USA, Uniloc Luxembourg, Inventergy, DSS, and IXI IP's conduct constitutes an unlawful contract, combination, or conspiracy agreements in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
- Whether Fortress, Uniloc 2017, VLSI, INVT, IXI IP, and Seven Networks' acquisitions of patents (or interests in patents) are unlawful asset transfers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;
- Whether Defendants' agreements and patent acquisitions constitute illegal and/or unfair methods of competition in violation of Section 17200 of the Cal. Bus. & Prof. Code;
- Whether Fortress, Uniloc, INVT, and Inventergy's attempts to evade commitments to license their SEPs on FRAND terms and conditions by constitutes illegal and/or unfair methods of competition in violation of Section 17200 of the Cal. Bus. & Prof. Code.

Disputed contentions of law regarding specific elements of the causes of action listed above are described in Defendants' motions to dismiss and Intel and Apple's briefs opposing those motions.

1 **b. Defendants’ Statement**

2 **i. Facts**

3 The Complaint alleges in conclusory fashion that Fortress and Fortress Credit have
4 orchestrated a “web” of patent assertion entities (“PAEs”) in order to aggregate “weak patents”
5 and bring “meritless” patent litigations. Dkt. No. 1 (“Cmplt.”) ¶ 9. None of this is true, and none
6 of it has anything to do with the antitrust laws or protecting competition.

7 Defendant Fortress is a leading global investment management firm that offers a range of
8 alternative investment strategies including credit, real estate, and private equity for institutional
9 and private investors. In particular, Fortress’s credit business is focused on investing globally,
10 primarily in undervalued assets and illiquid credit investments, including intellectual property.
11 Some of these business strategies involve providing loans to operating companies, where
12 intellectual property serves as the main collateral with such financing, and providing private
13 equity investments that enable inventors, research institutes, universities, and companies to
14 efficiently realize the value of their intellectual property. Without Fortress’s loans and
15 investments, these individuals and organizations would often lack sufficient resources to enforce
16 their Constitutionally-enshrined patent rights.

17 These patents are not “weak,” nor are Defendants’ infringement contentions “meritless,”
18 contrary to Plaintiffs’ conclusory assertions. This is demonstrated by the fact that Defendants
19 have prevailed in *inter partes* review proceedings, obtained favorable Markman and summary
20 judgment rulings, and survived various other challenges brought by Plaintiffs in the very lawsuits
21 that form the basis of Plaintiffs’ Complaint. Tellingly, despite repeated allegations in their
22 Complaint about “meritless” litigations, *see, e.g.*, Cmplt. ¶¶ 2, 9, 31, 40, 88, 93, 163, 164,
23 Plaintiffs conceded in their Opposition to Defendants’ Joint Motion to Dismiss and Strike
24 Plaintiffs’ Complaint that they are not invoking a sham litigation theory of antitrust liability and
25 instead are complaining only about supposedly anticompetitive patent aggregation. Dkt. No. 136
26 at 29:7-9, 31:4-6. Plaintiffs’ admission that they are not basing their case on a sham litigation
27 theory demonstrates that the bulk of the case pled in their Complaint is irrelevant and without
28 merit. Plaintiffs’ pivoted focus on unlawful patent aggregation is likewise baseless, especially

1 given that (i) Plaintiffs’ own patent portfolios alone are many times the size of all of Defendants’
 2 portfolios combined, (ii) Plaintiffs make no attempt to plead any facts to support their allegation
 3 that Defendants have market power in the so-called “Electronics Patents Market,” which would
 4 have to be comprised of millions of patents, and (iii) Plaintiffs make no attempt to plead any facts
 5 about Defendants’ purported aggregation of substitute patents.

6 As set forth in Defendants’ Joint Motion to Dismiss and Strike Plaintiffs’ Complaint
 7 (herein “Motion to Dismiss and Strike”), Dkt. No. 111, the Complaint has nothing to do with
 8 protecting competition. Rather, Plaintiffs’ real complaint is that loans or equity investments from
 9 Fortress-managed investment funds have allowed patent owners to sue Plaintiffs for infringement,
 10 when the original inventors and owners might not have been able to withstand the expense of
 11 Plaintiffs’ well-known scorched-earth defense tactics and refusals to pay for the technology they
 12 are using. There is nothing unlawful about that.

13 ii. Legal Issues

14 Plaintiffs assert that certain Defendants’ alleged conduct violates Sherman Act Section 1,
 15 Clayton Act Section 7, and California’s unfair competition law, Cal. Bus. & Prof. Code § 17200,
 16 *et seq.* (“UCL”). A threshold legal issue is whether Plaintiffs have stated claims pursuant to
 17 Federal Rule of Civil Procedure 12(b)(6), which is the subject of Defendants’ pending Motion to
 18 Dismiss and Strike. For the reasons briefly summarized below and numerous others contained in
 19 Defendants’ pending Motion to Dismiss and Strike, all of Plaintiffs’ claims fail as a matter of law
 20 for multiple independent reasons.

21 ***No Plausible, Relevant Antitrust Market.*** Each of Plaintiffs’ antitrust claims requires
 22 Plaintiffs to allege a plausible, relevant antitrust market. In order to plead a plausible, relevant
 23 antitrust market, Plaintiffs must define their market by identifying the particular product or
 24 technology at issue and each of its close economic substitutes. Courts in this district and around
 25 the nation routinely dismiss antitrust complaints where the proposed market does not identify the
 26 specific goods or technologies and their economic substitutes, or where the proposed market
 27 includes goods or technologies that are not economic substitutes. Here, Plaintiffs’ proposed
 28 “Electronics Patents Market,” which consists of the entire “market for patents for high-tech

consumer and enterprise electronic devices and components or software therein and processes used to manufacture them,” (Cmplt. ¶ 156) fails on both counts. Plaintiffs provide no bounds for their “market,” so it is unclear what it includes and what it excludes. Moreover, what little is alleged about the market shows that it is enormously overbroad because it includes goods and technologies that are not substitutes for each other. For instance, just using the names of some of the “customers” the Complaint identifies, Plaintiffs’ proposed market would include (but not remotely be limited to): microprocessors, televisions, computers, electronic business databases, streaming services, e-commerce, smartphones, e-books, nuclear reactor control systems, clock radios, and semiconductors. Without a proper antitrust market, Plaintiffs’ federal antitrust claims fail, as do the state law claims based on them. Apple also alleges a market consisting of “claimed” standards essential patents. That supposed market suffers from the same infirmities of overbreadth and lack of definition as the Electronics Patents Market. In particular, Apple fails to identify any substitute technologies considered at the time the standard was adopted, a legal prerequisite to pleading their purported claim. Moreover, that market is only relevant to Apple’s unfair competition claim (Count 4).

No Antitrust Injury. To state an antitrust claim, Plaintiffs must allege facts showing that they have suffered injury of the type the antitrust laws were intended to prevent, namely injuries resulting from harm to competition. Neither Apple nor Intel alleges that it has suffered this type of injury. For instance, there is no allegation that any of Defendants’ supposed competitors in the “Electronic Patents Market” have been forced out of the market or that anyone has been prevented from entering the market and competing. Nor is there any allegation of price fixing, exclusive dealing, or other such recognized harms to competition. Instead, Plaintiffs make bald assertions of supposed injury to themselves in terms of allegedly “supracompetitive” license fees and litigation costs. However, while the Complaint vaguely refers to “supracompetitive licensing returns” (Cmplt. ¶ 160), it never identifies any such licenses or the parties to them, or what supposedly makes the returns “supracompetitive,” or even alleges that Apple or Intel entered into any such license. Thus, Plaintiffs’ purported antitrust injury boils down to the cost of Apple and Intel having to defend against patent infringement cases brought by some of the Defendants. *Id.* ¶¶ 2,

9, 31, 40, 88, 163, 176, 178, 181, 185, 191. However, Plaintiffs allege that they are Defendants’ “customers” (*id.* ¶ 170)—not Defendants’ competitors—so allegedly driving up litigation costs of Plaintiffs fails to constitute antitrust injury as a matter of law.

Noerr-Pennington. Defendants’ patent infringement lawsuits that Plaintiffs ask this Court to prejudge as “meritless” (even while the vast majority of them are still pending) constitute First Amendment-protected petitioning activity. The Complaint’s conclusory assertions of purported “meritless” and “weak” patents fail as a matter of law to overcome that First Amendment protection. *See* Motion to Dismiss and Strike at 24-30. This fundamental failing infects Plaintiffs’ Section 1 and UCL claims.

Failure of Additional Elements. In addition to the failings noted above, Plaintiffs’ claims fail for other reasons. These include but are not limited to: (i) the failure to allege required evidentiary facts of an agreement to unreasonably restrain trade (Sherman Act Section 1 Claim), as all the Complaint alleges are garden variety lending and investment transactions and with no factual allegations of any intent to harm competition; (ii) the failure to allege any basis for concluding that the mere acquisition of patents poses an antitrust problem, as patents provide a lawful monopoly, and their acquisition is expressly permitted (Clayton Section 7 Claim); (iii) the failure to allege any claims against Seven Networks and IXI IP within the applicable limitations period; and (iv) the state law claims are barred by California’s litigation privilege (Cal. Civ. Code § 47), as they attack protected petitioning conduct—namely, the filing of litigation and associated licensing demands. All of these and other failings are discussed more fully in Defendants’ pending Motion to Dismiss and Strike.

Failures As To DSS. The Complaint’s allegations concerning DSS fail for two additional reasons. First, they were released by a settlement between Intel and DSS that resolved the only underlying litigation involving DSS identified in the Complaint. Second, based on the Complaint’s own allegations, the statute of limitations bars all claims against DSS because they are based on 2014 and early 2015 events. These failings are discussed further in DSS’s Supplemental Brief in support of the Motion To Dismiss and Strike (Dkt. 114).

Defendants do not believe the case should proceed as explained in their pending Motion to Dismiss and Strike. However, if the case did proceed, Defendants anticipate that the following disputed points of law, among others, could arise:

- Whether certain Defendants' alleged conduct constitutes an unlawful contract, combination, or conspiracy in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
- Whether certain Defendants' acquisitions of patents violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- Whether certain Defendants' alleged conduct constitutes unfair methods of competition in violation of the California Unfair Competition Law, Cal. Bus. Prof. Code § 17200, *et seq.*;
- Whether Plaintiffs have suffered cognizable antitrust or other injury;
- Whether Plaintiffs are entitled to statutory damages, costs, attorneys' fees, pre- and post-judgment interest, declaratory relief, equitable relief, and any other relief.;
- All other issues raised in the Motion to Dismiss and Strike.

3. Motions

On February 4, 2020, Defendants filed a joint motion to dismiss and strike the Complaint and a request for judicial notice in connection with that motion. Defendant DSS filed a supplemental motion to dismiss and strike and a request for judicial notice in connection with that supplemental motion. On March 19, 2020, Intel and Apple filed their oppositions. On April 13, 2020, Defendants filed their reply briefs. A hearing on Defendants' motions is scheduled for June 18, 2020.

On February 4, 2020, Defendants also filed a motion to stay discovery pending a ruling on Defendants' motion to dismiss and strike. On March 19, 2020, Intel and Apple filed their statement of non-opposition to the motion to stay. On March 25, 2020, the Court granted Defendants' motion to stay discovery pending a ruling on Defendants' motion to dismiss and strike. Dkt. No. 158.

Other motions may be filed as the case progresses, and the parties reserve the right to address the same.

1 **a. Plaintiffs' Statement**

2 Apple and Intel may file motions for summary judgment on one or more claims or issues at
3 the appropriate time.

4 **b. Defendants' Statement**

5 Defendants reserve the right to file additional motions if the case progresses, including but
6 not limited to summary judgment motions.

7 **4. Amendment of Pleadings**

8 **a. Plaintiffs' Statement**

9 Apple and Intel propose that they may amend their pleadings without leave until
10 November 20, 2020. Plaintiffs disagree with Defendants' statement below. Intel's voluntary
11 dismissal pursuant to Rule 41(a) of a separate lawsuit has no bearing on whether Plaintiffs should
12 be permitted to amend their pleadings in this action.

13 **b. Defendants' Statement**

14 Defendants believe that discussion of amendments is premature given that the Motion to
15 Dismiss and Strike is still pending. Moreover, Plaintiffs' deadline to amend as a matter of course
16 has passed. Plaintiffs made the strategic decision not to amend to attempt to address the
17 deficiencies in the Complaint identified by Defendants' Motion to Dismiss and Strike. In
18 addition, Intel filed a very similar complaint against several of the Defendants, only to dismiss it
19 and refile the Complaint in this action the same day. *Compare* Dkt. No. 1 with *Intel Corporation*
20 *v. Fortress Investment Group LLC et al.*, No. 3:19-cv-06856-EJD, Dkt. No. 35. Consequently,
21 Defendants believe that, should the Court address the issue of the deadline to amend the pleadings,
22 Plaintiffs should have no further right to amend the Complaint without leave of Court. Should
23 Plaintiffs later seek to amend, Plaintiffs must demonstrate why any proposed amendment would
24 not be futile given their failure to articulate cognizable claims.

25 **5. Evidence Preservation**

26 Plaintiffs and Defendants certify that they have reviewed the Guidelines Relating to the
27 Discovery of Electronically Stored Information, and confirm that the parties have met and
28 conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to

1 preserve evidence relevant to the issues reasonably evident in this action. The parties anticipate
2 that they will submit an ESI Stipulation setting forth their agreements with respect to the
3 discovery of ESI in this action.

4 **6. Disclosures**

5 **i. Plaintiffs' Statement**

6 Plaintiffs are prepared to exchange Rule 26(a)(1) disclosures on June 11, the same day as
7 the filing of the Joint Case Management Statement. In light of the Court's order staying discovery
8 pending a ruling on Defendants' motion to dismiss and strike (ECF No. 158), however, Plaintiffs
9 agree that initial disclosures do not need to be exchanged at this time. The Court's Order staying
10 discovery (ECF No. 158) ends when the Court rules on Defendants' pending motions, and
11 Plaintiffs therefore propose that initial disclosures be exchanged within 14 days of the Court ruling
12 on Defendants' motion to dismiss and strike, as set forth in the Court's March 25 Order.

13 **ii. Defendants' Statement**

14 Defendants believe that the exchange of initial disclosures is unnecessary at this time,
15 given that Plaintiffs did not oppose Defendants' motion to stay and a full discovery stay has been
16 entered by the Court. Defendants also disagree with Plaintiffs' position that the Court's Order
17 staying discovery (ECF No. 158) will necessarily end when the Court rules on Defendants'
18 pending motions. For example, if the Court grants those motions, Plaintiffs should not be
19 permitted to take discovery and the stay should remain in effect including with respect to initial
20 disclosures. Defendants propose that initial disclosures should be exchanged 14 days after the
21 Court's order affirmatively lifting the discovery stay issued on March 25, 2020 (ECF No. 158), if
22 and when that occurs.

23 **7. Discovery**

24 **a. Discovery Taken to Date**

25 **i. Plaintiffs' Statement**

26 Discovery is currently stayed, and neither party has sought discovery to date. Plaintiffs
27 believe there is no need to phase discovery and Defendants have articulated no reason why they
28 believe it is necessary to phase discovery.

1 **ii. Defendants' Statement**

2 Defendants do not agree that there is no need to phase discovery. Because discovery is
3 currently stayed while Defendants' Motion to Dismiss and Strike is pending, any discussion of
4 phasing discovery is premature. If necessary, Defendants will meet and confer with Plaintiffs
5 about phasing discovery if and when the stay is lifted.

6 **b. Scope of Discovery**

7 **i. Plaintiffs' Statement**

8 Intel and Apple expect that substantial discovery will be necessary in this case, in part
9 because of the number of purportedly separate entities owned or controlled by Fortress. Intel and
10 Apple intend to pursue discovery relating to the factual and legal issues set forth herein and in
11 their Complaint, including any amendments thereto. As discussed above, Intel and Apple are
12 challenging the Defendants' anticompetitive scheme of acquiring a massive portfolio of patents
13 (including substitute and complementary patents) that purportedly read on electronic devices and
14 components or software therein and processes used to manufacture them, and then using their
15 aggregated portfolio for serial assertions to obtain patent royalties greatly exceeding the value of
16 the alleged inventive contributions of and competitive prices for the patents.

17 Among other things, Intel and Apple will need discovery from Defendants and third parties
18 relating to the (1) patents transferred to the Defendants; (2) the terms of those transfers and
19 agreements relating to those transfers; (3) the Defendants' respective patent enforcement
20 strategies; (4) licenses, settlement agreements, covenants not to sue, and any other agreements
21 under which Defendants have granted or received any rights relating to any of the patents asserted
22 in the litigations identified in the complaint or any other litigation where Defendants have asserted
23 patents in which Fortress has an economic, financial, or ownership interest or an agreement with
24 the Defendant with respect to those patents ("Fortress-backed patents"); (5) offers to license or
25 settle or otherwise grant or receive any rights relating to any Fortress-backed patents; (6)
26 agreements to acquire or sell any rights relating to any of the Fortress-backed patents; (7)
27 agreements (a) between any of the Fortress entities and any of the other Defendants or (b) that
28 otherwise show the relationship(s) between one or more of the Fortress entities and any of the

other Defendants; (8) communications between Defendants relating to any of the above categories; (9) the Defendants' rationales and motivations for the conduct; (10) documents sufficient to show funding arrangements for the assertion (either by litigation or in a pre-litigation demand) of Fortress-backed patents; (11) the Defendants' FRAND obligations; and (12) the costs that Defendants have imposed on third parties.

ii. Defendants' Statement

Defendants believe that the appropriate scope of discovery, if any, should be determined after the Court rules on the pending Motions to Dismiss and Strike, as the parties cannot determine what amount of discovery will be necessary given that it is unknown what claims or parties (if any) may remain after the Court rules on the Motions.

c. Modifications to Discovery

i. Plaintiffs' Statement

Based on the expected scope of discovery, Plaintiffs propose the following:

Requests for Production

Unlimited

Interrogatories

Apple and Intel may collectively serve 50 interrogatories on each Defendant. Defendants may collectively serve 50 interrogatories on Apple and 50 interrogatories on Intel.

Requests for Admission

Unlimited

Party Depositions

Apple and Intel shall collectively have 185 hours of total fact deposition time of the Defendants collectively (not counting expert depositions) to take the depositions of Defendants' witnesses, including corporate depositions under Fed. R. Civ. P. 30(b)(6) depositions. Defendants shall collectively have 70 hours of total fact deposition time of Apple and Intel collectively (not counting expert depositions) to take the depositions of Apple's and Intel's witnesses, including corporate depositions under Fed. R. Civ. P. 30(b)(6) depositions.

Each deposition shall be governed by the one-day, seven-hour limit of Fed. R. Civ. P. 30(d)(1), with each deposition counting at least 3.5 hours. The deposition of any single individual designated as a corporate witness to testify regarding a deposition topic contained in a deposition notice served under Fed. R. Civ. P. 30(b)(6) is presumptively limited to seven hours of deposition testimony for that individual, with each deposition counting at least 3.5 hours. However, if an individual Fed. R. Civ. P. 30(b)(6) corporate witness is designated by the offering party on multiple unrelated topics, the deposing party may request a reasonable number of additional deposition hours, and the offering party shall not unreasonably deny the request.

Non-Party Depositions

No limitation, but each party reserves any right it has to object to non-party discovery.

Response to Defendants' Statement

Contrary to Defendants' insinuations, to the extent Plaintiffs' deposition time proposals are disproportionate, it is in favor of Defendants. There are *eleven* defendants and only *two* plaintiffs. Plaintiffs' proposal permits Defendants to take an average of 35 hours of deposition time per Plaintiff while permitting Plaintiffs only an average of 16.8 hours deposition time per Defendant. Defendants are also simply incorrect that they would be limited under Plaintiffs' proposal to only 10 depositions – to the extent they opted to take depositions that lasted less than 7 hours they would be permitted more than 10 depositions. Plaintiffs respectfully submit that imposing a limit on the number of deposition hours rather than the total number of depositions will encourage each side to take depositions that are no longer than necessary while allowing each side the discovery that it needs. To the extent Defendants are arguing that each side should be permitted no more than 10 depositions total, this would be extremely prejudicial to Plaintiffs as they would not be able to take even a single deposition of every Defendant.

ii. Defendants' Statement

Defendants disagree with Plaintiffs' enhanced limits to discovery and believe it is premature to discuss modifications of the discovery rules while discovery is stayed pending Defendants' Motion to Dismiss and Strike. The parties cannot determine what amount of discovery will be necessary given that it is unknown what claims or parties (if any) may remain

1 after the Court rules on the pending Motion to Dismiss and Strike. Moreover, Plaintiffs' proposals
 2 are disproportionate—*e.g.*, 185 hours of fact deposition time of the Defendants versus 70 hours of
 3 fact deposition time of the Plaintiffs. Under this proposal, Defendants would only be allowed to
 4 take the 10 depositions provided under the default rule, Fed. R. Civ. P. 30(a)(2)(A)(i), whereas
 5 Plaintiffs would get to take more than two-and-half times that amount. And the fact that
 6 Plaintiffs' proposal permits more deposition time per Plaintiff than per Defendant is irrelevant
 7 given that Plaintiffs are much larger companies who have far more employees than Defendants.

8 Defendants also disagree that Plaintiffs' proposal to allocate party depositions by a total
 9 number of hours, as opposed to a total number of depositions as assumed in Rule 30, is reasonable
 10 or appropriate. Under this proposal, Plaintiffs would be able to notice and take scores of short
 11 depositions, imposing significant burdens of preparation on Defendants and their counsel.
 12 Defendants do not believe the Court should vary from the approach found in Rule 26(b)(2) and
 13 Rule 30, in which the limit on the number of depositions is based on the deponents, not hours.

14 Defendants propose that the parties meet and confer over the scope of discovery once the
 15 Motion to Dismiss and Strike has been decided.

16 **d. Discovery of ESI**

17 If and when the discovery stay is lifted, the parties intend to discuss and enter into an ESI
 18 stipulation addressing preservation, collection, and production of ESI.

19 **e. Protective Order**

20 If and when the discovery stay is lifted, the parties intend to negotiate the scope of a
 21 protective order to govern this action.

22 **f. Discovery Disputes**

23 None at this time.

24 **g. Service**

25 The parties agree that, to the extent possible in light of the volume of the submission, all
 26 court filings, discovery, and documents to be served on opposing counsel, to the extent not served
 27 through ECF (namely, filings under seal), will be served via email, or if too voluminous, by FTP
 28

or other internet file service, on each of the other parties, and such service shall constitute proper service under Fed. R. Civ. P. 5(b)(2)(E).

h. Privilege Logs/Privileged Information

i. Plaintiffs' Statement

The parties are not required to include on their privilege logs any: (1) attorney-client communications and/or work product regarding prosecution or defense of any of the patent litigations mentioned in the Complaint or any future patent litigations among any of the parties to this action after each such suit was or is filed; or (2) attorney-client communications and/or work product regarding the underlying litigation, including any protected documents that reflect communications between counsel and their respective clients, or work-product documents that reflect work of counsel that were created in anticipation of this litigation, even if created before the filing date of the Complaint. For clarity, the foregoing does not exempt from privilege logging obligations documents that relate to (a) transfer of rights in or licensing of (or potential transfer of rights in or potential licensing of) any patent, (b) the relationships between or among the parties, or (c) anything relating to formation of the parties, even if such documents have some connection to the patent litigations in (1).

It is not premature to discuss privilege logging at this time. The scope of the case is unlikely to materially affect the type of responsive privileged material that may be at issue in this case.

ii. Defendants' Statement

Defendants believe it is premature to discuss privilege logging until the scope of the case (if any) is determined by the Court's ruling on the Motion to Dismiss and Strike.

8. Class Actions

This is not a class action.

9. Related Cases

a. Plaintiffs' Statement

As Defendants acknowledge, there are no related cases. Intel did not file a motion to relate the instant action to *Intel Corporation v. Fortress Investment Group LLC, et al.*, No. 5:19-cv-

06856-EJD (N.D. Cal.) (“-6856 Action”). Intel filed an “Administrative Motion to Consider Whether Cases Should Be Related so that the Court may consider whether this case is related to” the -6856 Action. Dkt. No. 7 at 1. As Defendants note, Judge Davila found the instant case and -6856 Action were not related. Dkt. No. 47.

b. Defendants’ Statement

Defendants are not aware of any related cases as defined under the local rules, but highlight for the Court two instances in which various parties filed administrative motions to consider whether the present case (and Intel’s substantially similar prior antitrust case) were related to other actions. First, Intel filed an administrative motion to consider whether the instant action was related to Intel’s nearly identical prior (and now voluntarily dismissed) antitrust suit against Defendants Fortress, Fortress Credit, VLSI, and DSS before Judge Davila. *See Intel Corporation v. Fortress Investment Group LLC et al.*, No. 3:19-cv-06856-EJD (filed October 21, 2019). Intel’s prior antitrust suit asserted a Sherman Act Section 1 claim, a Sherman Act Section 2 monopolization claim, a Clayton Act Section 7 unlawful acquisition claim, and a California unfair competition law claim premised largely on the same alleged conduct by the same entities in the instant action. Intel voluntarily dismissed the suit on November 20, 2019, and refiled the present action on the very same day—dropping the monopolization claim, adding Apple as a plaintiff, and naming seven additional Defendants (all of which were mentioned in the prior antitrust suit by way of virtually identical allegations). Defendants Fortress, Fortress Credit, and VLSI filed a response in support of Intel’s administrative motion. *Id.*, Dkt. No. 38. Judge Davila denied Intel’s motion. *Id.*, Dkt. No. 39.

Second, in Intel’s prior antitrust action, Defendants Fortress, Fortress Credit, and VLSI filed an administrative motion to relate that action to VLSI’s patent infringement suit against Intel in this District, *VLSI Technology LLC. v. Intel Corp.*, Case No. 5:17-CV-05671-BLF, noting that the merits of the patent infringement suit bore upon Intel’s prior action. *See id.*, Dkt. No. 266. Intel opposed the motion and argued that the legal issues were entirely distinct and that the antitrust claims “do not hinge on the merits outcome of the present action.” *See id.*, Dkt. No. 269 at 2:26-27. Judge Freeman denied the administrative motion. *See id.* Dkt. No. 270.

1 **10. Relief**

2 Plaintiffs' Complaint contains the following requests for relief:

- 3 a. That Defendants' unlawful conduct be declared a violation of Section 1 of the
4 Sherman Act, 15 U.S.C. § 1; Section 7 of the Clayton Act, 15 U.S.C. § 18; and Cal.
5 Bus. Prov. Code § 17200, et seq.;
- 6 b. That Intel and Apple recover damages against Defendants in an amount to be
7 determined and multiplied to the extent provided by law, including under Section 4
8 of the Clayton Act;
- 9 c. That all contracts or agreements Defendants entered into in violation of the Sherman
10 Act, Clayton Act, or Cal. Bus. Prov. Code § 17200, et seq. be declared void and the
11 patents covered by those transfer agreements be transferred back to the transferors;
- 12 d. That all patents transferred to Defendants in violation of the Sherman Act, Clayton
13 Act, or Cal. Bus. Prov. Code § 17200, et seq. be declared unenforceable;
- 14 e. Award Plaintiffs' injunctive relief under Section 7 of the Clayton Act, 15 U.S.C. §
15 18;
- 16 f. Award Plaintiffs' injunctive relief for their Unfair Competition Law Claim;
- 17 g. Award to Intel and Apple their costs and expenses associated with this case, together
18 with interest; and
- 19 h. Grant such other and further relief as the Court may deem just and proper under the
20 circumstances.

21 **a. Defendants' Statement**

22 Defendants oppose all forms of relief sought by Plaintiffs and contend that Plaintiffs'
23 claims lack merit and that they are therefore not entitled to any damages. Specifically, Plaintiffs
24 are not entitled to any relief because the Complaint fails to state any claims under Federal Rule of
25 Civil Procedure 12(b)(6). Defendants also seek attorneys' fees and costs pursuant to California's
26 Anti-SLAPP statute for all fees and costs incurred in connection with Defendants' Motion to
27 Dismiss and Strike.

28

If any portion of the Complaint survives Defendants' Motion to Dismiss and Strike, Defendants reserve the right to assert counterclaims and cross claims, and Defendants may seek to recover attorneys' fees and costs expended in the defense of this matter (in addition to those being sought pursuant to California's Anti-SLAPP statute).

12. Settlement and ADR

The parties propose private mediation before a mediator to be agreed to by the parties at a later date.

13. Consent to Magistrate Judge For All Purposes

The parties do not consent to having a magistrate judge conduct all further proceeding including trial and summary judgment.

14. Other References

The parties do not believe this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

a. Plaintiffs' Statement

At this time, Plaintiffs are unaware of any issues that may be narrowed by agreement or by motion.

b. Defendants' Statement

Defendants respectfully submit that it is premature to consider an agreement to narrow issues for trial or to expedite the presentation of evidence at trial. Plaintiffs' claims can be dismissed entirely, as set forth in Defendants' Motion to Dismiss and Strike.

16. Expedited Trial Procedure

This is not the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A.

17. Scheduling

a. Plaintiffs' Statement

Plaintiffs respectfully request that the Court set a schedule consistent with this Court's Guidelines re Calculation of Trial Time Line:

<u>Event</u>	<u>Deadline</u>
Case Management Conference	June 18, 2020
Hearing on Motion to Strike	June 18, 2020
Amendment of Pleadings	November 20, 2020
Fact Discovery Deadline	December 17, 2020
Designation of Opening Experts with Reports	December 17, 2020
Designation of Rebuttal Experts with Reports	January 14, 2021
Expert Discovery Deadline	February 11, 2021
Deadline for Filing Dispositive Motions	February 11, 2021
Hearing on Dispositive Motions	March 18, 2021
Joint Pretrial Conference Statement and Trial Briefs	May 4, 2021
Objections	May 14, 2021
Pre-Trial Conference	May 25, 2021
Trial Date	June 21, 2021

To the extent the Court agrees with Defendants that a case schedule should be delayed until the Court rules on Defendants' pending motions to Dismiss and Strike, Plaintiffs respectfully suggest that the Court should set trial for approximately one year from the Court's ruling. Defendants' proposed schedule is inconsistent with this Court's Guidelines.

b. Defendants' Statement

Because the scope of this case depends on what claims (if any) can survive Defendants' pending Motions to Dismiss and Strike, Defendants believe that the Court should defer setting a case schedule until those motions have been decided.

In the alternative, Defendants propose the case schedule set forth below. The proposed schedule includes a trial date that is appropriate for this complex, multi-party antitrust action, and

is also consistent with the timeline that the Court recently approved in another complex antitrust case, *Staley et al. v. Gilead Sciences, Inc. et al*, 3:19-cv-02573-EMC, Dkt. No. 342.

<u>Event</u>	<u>Deadline</u>
Initial disclosures and start of fact discovery	30 days after Court's whole or partial denial of Defendants' motions to dismiss
Close of fact discovery	470 days after start of fact discovery
Last day for parties to designate experts and issue expert reports	90 days after close of fact discovery
Rebuttal expert reports	60 days after issuance of expert reports
Reply expert reports	45 days after issuance of rebuttal expert reports
Close of expert discovery	60 days after issuance of reply expert reports
Last day for parties to file dispositive pre-trial motions and objections to experts (i.e., <i>Daubert</i> and similar motions)	60 days after close of expert discovery
Joint Pretrial Conference Statement and Trial Briefs	40 days after decision on summary judgment or as determined by the Court
Objections	50 days after decision on summary judgment or as determined by the Court
Pretrial conference	60 days after decision on summary judgment or as determined by the Court
Trial	105 days after decision on summary judgment or as determined by the Court

18. Trial

a. Plaintiffs' Statement

Apple and Intel have demanded a jury trial for their claims, and expect that a 15-day trial may be required.

1 **b. Defendants' Statement**

2 Defendants respectfully submit that it is premature to estimate an expected length of trial at
3 this time.

4 **19. Disclosure of Non-Party Interested Entities or Persons**

5 The parties have filed Certifications of Interested Persons or Entities pursuant to Civil
6 Local Rule 3-16.

7 **20. Professional Conduct**

8 All attorneys of record have reviewed the Guidelines for Profession Conduct for the
9 Northern District of California.

1 Dated: June 11, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document entitled Joint Case Management Statement to be filed via the court's CM/ECF system, which shall send notice to the counsel of record for the parties.

Dated: June 11, 2020

Respectfully submitted,

By: /s/ Mark D. Selwyn